

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Brad R. Johnson,	)	Civil Action No.: 4:08-2726-TLW-TER
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Lewis v. Hall; Doris Cubit, CPA; A. Able,	)	
CPA; B. Baker, CPA; and C. Charlie, CPA,	)	
	)	
Defendants.	)	
	)	
Brad R. Johnson,	)	Civil Action No.: 3:09-cv-0102-TLW-TER
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Randall Bryant; Doris Cubitt, CPA; Malane	)	
S. Pike, ESQ.; Mark T. Hobbs, CPA; Gary	)	
F. Forte; Bobby R. Creech, Jr., CPA;	)	
Donald H. Burkett, CPA; Anthony A.	)	
Callander, CPA; Wendell Lundsford, PA;	)	
and John F. Camp, CPA,	)	
	)	
Defendants.	)	
	)	

**ORDER**

The plaintiff, Brad R. Johnson, filed two civil actions, *pro se*, which have been consolidated for purposes of discovery. The lead case, Civil Action No. 4:08-cv-2726-TLW-TER (“First Action”), was filed on August 1, 2008. The next action, Civil Action No. 3:09-cv-0102-TLW-TER (“Second Action”), was filed on January 16, 2009. The defendants filed motions to dismiss each action on October 23, 2009. (Doc. #139 in the First Action, Doc. #104 in the Second Action). Additionally, the plaintiff and the defendants have filed cross motions for summary judgment in each

action. (Docs. #154, #157 in the First Action, Docs. #119, #122 in the Second Action).

This matter now comes before this Court for review of the Amended Report and Recommendation (“the Report”) filed by United States Magistrate Judge Thomas E. Rogers, III to whom this case was previously assigned. (Doc. #201 in the First Action, Doc. #155 in the Second Action). In the Report, the Magistrate Judge recommends that the defendants’ motion to dismiss each action be denied, that the plaintiff’s motion for summary judgment in each action be denied, and that the defendants’ motion for summary judgment in each action be granted as to the plaintiff’s second cause of action for a First Amendment violation in each case, and denied without prejudice and with leave to refile as to the plaintiff’s first and third causes of action in each case. The plaintiff filed objections to the Report. (Doc. #205 in the First Action, Doc. #158 in the Second Action).<sup>1</sup> In conducting this review, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections...The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the Report and Recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case, the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Housing Auth. of the City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992)

(citations omitted).

In light of the standard set forth in Wallace, the Court has reviewed, de novo, the Report and

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<sup>1</sup>South Carolina Attorney General Henry D. McMaster, who filed an amicus memorandum in the First Action, also filed an objection in the First Action. (Doc. #203). The Court notes that the South Carolina Attorney General has taken a position in support of the constitutionality of the statutes challenged in these actions.

the objections. After careful review of the Report and objections thereto, it is hereby **ORDERED** that the Report is **ACCEPTED**. (Doc. #201 in the First Action, Doc. #155 in the Second Action).

With regard to the First Action, Civil Action No. 4:08-cv-2726-TLW-TER, the defendants' motion to dismiss, (Doc. #139), is **DENIED**; the plaintiff's motion for summary judgment, (Doc. #154) is **DENIED**; and the defendants' motion for summary judgment, (Doc. #157), is **GRANTED** as to the plaintiff's second cause of action for a First Amendment violation and **DENIED** without prejudice and with leave to refile as to the plaintiff's first and third causes of action.

With regard to the Second Action, Civil Action No. 3:09-0102-TLW-TER, the defendants' motion to dismiss, (Doc. #104), is **DENIED**; the plaintiff's motion for summary judgment, (Doc. #119), is **DENIED**; and the defendants' motion for summary judgment, (Doc. #122), is **GRANTED** as to the plaintiff's second cause of action for a First Amendment violation and **DENIED** without prejudice and with leave to refile as to the plaintiff's first and third causes of action.

**IT IS SO ORDERED.**

s/Terry L. Wooten  
United States District Judge

September 15, 2010  
Florence, South Carolina